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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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House Bill 5812 (As Introduced)

Topic: Regulatory Flexibility in Administrative Rules
Sponsor: Representative Huizenga
Co-sponsors: Representatives Green and Stahl
Committee: House Commerce

Date Introduced: March 1, 2006

Date of Summary: March 3, 2006

The bill amends the Administrative Procedures Act of 1969 to provide for review of the policy and legal bases for certain requests for rulemaking and the attachment of a regulatory flexibility statement to such requests.

In a case where an agency receives recommendations or comments by an advisory committee or other advisory entity created by law, a decision record is required to be attached to the Request for Rulemaking and posted on the agency's website not less than 24 months prior to submission of the requests. The decision record is required to contain the minutes of all meetings, the votes of members, and the discussion and reasoning in support of the decision.

The State Office of Administrative Hearings and Rules is not required to approve a proposed rule and is prohibited from doing so until it has indicated that there are appropriate and necessary policy and legal bases for approving the request. A written or electronic response to the request for rulemaking request is required that specifically addresses the issue of whether there is an appropriate and necessary policy and legal basis for the proposed rulemaking.

Additional actions are required of the agency when a rule affects small businesses. These include:

- Identification and estimation of the number of small businesses affected and the probable effect of the rule.
- Reference is made to projecting reporting, record-keeping, and other administrative costs in connection with establishing differing compliance or reporting requirements for small businesses.
- Eliminating compliance is added to the list of options for reducing the impact on small business. The agency is also required to identify the skills necessary to comply with the reporting requirements related to the rule.

An agency is required to attach a regulatory flexibility statement to a request for rule. The statement is required to contain the following in relation to the impact of the rule on small businesses.

- The establishment of less stringent compliance or reporting requirements.
- The establishment of less stringent schedules or deadlines for compliance or reporting requirements.
- The consolidation or simplification of compliance or reporting requirements.
- The establishment of performance standards to replace proposed design or operational standards.

An agency is now required to use specified classifications in the act in reducing the disproportionate impact of a rule on small business. Use of the three categories (0-9 employees, 10-49 employees, and 50-249 employees) is now permissive.

Section 43 is amended to require substantial compliance with several other sections of the APA for a rule to be valid.

A copy of the request for rule and the regulatory flexibility statement are required to be incorporated into the agency report to the Joint Committee on Administrative Rules. These documents and the Small Business Impact Statement are also required to be included with the notice of transmittal to JCAR.

An agency would be required to describe in its Regulatory Impact Statement how it has reduced the economic impact of the rule on small businesses. Currently, the agency may also indicate the reasons such a reduction is not feasible.

A regulatory impact statement is required to be posted on an agency's website for at least 24 months.

Annual regulatory plans submitted to the State Office of Administrative Hearings and Rules would no longer be advisory. The plan would also be required to include a report stating or describing all existing rules promulgated by the agency and an indication of whether the rules should be continued, changed, or rescinded.

Within 5 years after the effective date of any rules promulgated by an agency or 4 years after the effective date of this bill for existing rules, an agency and the Appropriations committees of each house are required to review each set of rules to determine whether there is an increased impact on small business. The review is required to state whether there is a continued need for the rules, the nature of any complaints or comments, the complexity of compliance, conflict or duplication with federal or local rules, and the date of the last evaluation and the degree to which technology, economic conditions, or other factors have changed regulatory activity covered by the rules. The agency is also required to issue a report describing all existing rules and whether the rules should be continued, changed, or rescinded considering their statutory and public policy purpose.